

APPEAL NO. 93392

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city) Texas, on April 20, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained an injury in the course and scope of his employment on (date of injury), and that he suffered disability from December 6, 1991 through the date of the contested case hearing. Appellant (carrier) urges that the hearing officer did not have a sufficient basis for his findings of injury and disability and that he did not place the burden of proof on the claimant. Claimant asserts, in essence, that there is sufficient evidence to support the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Finding sufficient evidence to support the decision and not finding the hearing officer's determinations to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm.

Clearly, there was conflicting evidence before the hearing officer and he had to sort through the testimony, statements and other documentary evidence to determine the facts in the case, as is his responsibility under the 1989 Act. Article 8308-6.34(g). In doing so, he is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308.6.34(e); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. Only if we were to find, which we do not in this case, that his determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would we have a sound basis for disturbing his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The claimant asserted that he sustained an injury to his back on (date of injury), when he slipped getting out of his employer's truck and fell on his back resulting in instant pain. His son witnessed the accident and gave a statement corroborating the claimant's version. Another son who came upon the scene sometime thereafter also stated that his father indicated he injured his back to him and that his mother, who had come to the work site with the second son, took the claimant to the doctor. This son stated he filled in for his father as "acting foreman" and that he signed the work log as if he had worked the full time period. A third witness at the work site verified that the claimant was working that day and, although he did not see the claimant fall or hear him state that he had an accident, noticed that the claimant did not "seem like he had his full strength" that afternoon. The claimant stated that he went to the doctor because of the pain he was experiencing but that when his doctor took his blood pressure and found it greatly elevated, that concern took over and he was placed in the hospital. The doctor's report concerning the 5th of November indicated the claimant "presented to my office today for evaluation of hematuria." His report goes on to note that "[h]e also complains of some bilateral low back pain with some radiation down his right side."

The claimant was released from the hospital on November 11th after blood related problems and his blood pressure were apparently brought under control. An MRI was subsequently performed on his back on December 9, 1991, which showed in pertinent part:

1. Focal midline herniated nucleus pulposis L1-2 which indents the thecal sac.
2. There is borderline herniated nucleus pulposis at L2-3, however, this is considered more likely to be a prominent bulge of the annulus.
3. Degenerative disc disease at L2-3 and L3-4 with associated anterior spurring and anterior herniation of disc material at these levels.

In short, the claimant was under treatment of a neurological surgeon from February 24, 1992, on and subsequently underwent a myelogram and ultimately back surgery on August 19, 1992. He testified that he continues to be unable to work as a result of his back injury.

The carrier attempted to establish that the claimant was not working for the employer on (date of injury), and called a supervisor of the company who contracted with the claimant's employer. This witness could not state for certain that he was at the job site on the 5th of November or whether it was a day or two later but that he did not see the claimant working when he went to the job site. The carrier also introduced time logs which showed that the claimant did not work on the 5th of November and called the claimant's supervisor who stated that the claimant did not report any injury to him or his wife and that he, the claimant, had been specifically asked if he were injured on the job by his wife. He testified the claimant indicated he was in the hospital because of his blood pressure and that the first he, the supervisor, knew of any alleged back injury was 30 days later on December 5th. The carrier also called a witness, to whom the hearing officer expressly indicated he did not attach much credibility because of what the hearing officer detected as bias on his part, who testified that during 1992 he had seen the claimant performing physical activities such as sawing and hauling wood and changing a tire. The carrier also introduced medical reports and pointed out that none of them indicated any work relationship to the back condition until a self serving history appeared in a report dated January 11, 1993.

As indicated, the evidence conflicted in many respects. However, as stated earlier, this was for the hearing officer to sort out. This he did and we cannot find that his decision is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Further, the hearing officer made clear in his opening advise that

the burden of proof to establish the case was on the claimant. We find no basis to conclude he did not apply this standard. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge